In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 826

THE GREAT WESTERN FOOD DISTRIBUTORS, INC., NATHANIEL E. HESS, AND CHARLES S. BORDEN, PETITIONERS

v.

EZRA TAFT BENSON (SUCCESSOR TO CHARLES F. BRANNAN), SECRETARY OF AGRICULTURE, AND THOMAS J. FLAVIN, JUDICIAL OFFICER BY APPOINTMENT OF THE SECRETARY OF AGRICULTURE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit (R. 1469-1481) is reported in 201 F. 2d 476. The findings of fact, conclusions of law, and order of the Judicial Officer [1] of the United States Department of Agricul-

[1] The Judicial Officer acted for the Secretary of Agriculture pursuant to authority delegated (10 F.R. 13769) under the Act of April 4, 1940, c. 75, 54 Stat. 81, 5 U.S.C. § 516a *et seq.*

ture (R. 1407-1456) are reported in Agriculture Decisions, Vol. 10, pp. 783-829.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on January 14, 1953 (R. 1481). A petition for rehearing was denied February 24, 1953 (R. 1483). The petition for a writ of certiorari was filed May 23, 1953. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Charles F. Brannan, then Secretary of Agriculture, was a respondent in this case in the Court of Appeals (R. 1458). To date, there has been no substitution of his successor, Secretary Ezra T. Benson.

QUESTIONS PRESENTED

The basic issue is whether the record supports the ultimate finding that The Great Western Food Distributors, Inc. (hereinafter referred to as "Great Western"), cornered the December 1947 refrigerator egg futures market on the Chicago Mercantile Exchange. This presents the following subsidiary questions:

1. Whether the record supports the finding that Great Western acquired a large and controlling long position in the December 1947 refrigerator egg futures market by means of its transactions in refrigerator eggs and egg futures.

2. Whether the record supports the finding that, during the period involved in this case, refrigerator eggs stored in warehouses outside of Chicago were

not available to the shorts, because (a) there was an economic impediment, at all pertinent times, to the delivery of out-of-town refrigerator eggs, and (b) because such eggs could not, under the rules of the Exchange, be delivered on (or after) the crucial last two days of trading when Great Western substantially liquidated its large and controlling long futures position.

3. Whether the record supports the finding that Great Western compelled the cornered shorts to settle their December 1947 refrigerator egg futures contracts with Great Western at a manipulated, *i.e.,* artificially high, price.

STATUTE INVOLVED

The pertinent provisions of the Commodity Exchange Act (Act of September 21, 1922, c. 369, 42 Stat. 998, as amended by the Act of June 15, 1936, c. 545, 49 Stat. 1491, as amended, 7 U.S.C. § 1, *et seq.*) are set forth in Appendix A, *infra,* pp. 18-21.

STATEMENT

This proceeding had its origin in a complaint issued by the Secretary of Agriculture pursuant to § 6(b) of the Commodity Exchange Act (7 U.S.C. § 9), charging, *inter alia,* that Great Western cornered the December 1947 refrigerator egg futures market on the Chicago Mercantile Exchange. The complaint alleged that, as a result of its transactions in egg futures contracts and refrigerator eggs, Great Western "placed itself in a position where it could and did demand such price as it saw fit from those who had sold December 1947 egg

futures contracts" (R. 7), and that Great Western's corner was consummated by Nathaniel E. Hess, Vice-President of Great Western, and by Charles S. Borden, in charge of Great Western's Chicago office (R. 3-4). Petitioners were directed by the complaint to show cause why their trading privileges should not be revoked or suspended (R. 8).

On the basis of the evidence introduced at the administrative hearing, the hearing examiner[2] entered detailed findings, including the ultimate finding that Great Western cornered the December 1947 refrigerator egg futures market on the Chicago Mercantile Exchange (R. 1339-1369). The Judicial Officer of the United States Department of Agriculture made substantially similar findings (R. 1416-1430), stated his conclusions (R. 1430-1456), and promulgated an order (R. 1456) directing all contract markets to deny all trading privileges to petitioners for a period of one year. On appeal to the Court of Appeals for the Seventh Circuit the order was affirmed, the court holding that "a review of the entire record is convincing that the greater weight of the evidence sustained the Referee and Judicial Officer in their conclusion that petitioner Great Western had cornered the egg market on the Chicago Mercantile Exchange in December 1947" (R. 1480).

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[2] The examiner is referred to as a referee in the Commodity Exchange Act, but his appointment and functions are under the Administrative Procedure Act.

The underlying facts are as follows:

Great Western is registered, under the provisions of the Commodity Exchange Act, as a futures commission merchant with membership trading privileges on the Chicago Mercantile Exchange. Nathaniel E. Hess is the company's vice-president (R. 3, 11) and, during the period involved in this case, "set the policy for all buying and selling of Great Western" (R. 548). Charles S. Borden is in charge of the Chicago office of Great Western and, at all critical times, executed the trading orders received from Hess (R. 601-602).

The trading unit in December 1947 egg futures was a contract for 600 cases, 30 dozen eggs to the case (*i.e.,* 18,000 dozen eggs), commonly referred to as one carlot (R. 35). The contract was a refrigerator egg contract, par delivery thereunder consisting of *refrigerator* eggs, grading U.S. No. 2 extras, originally stored during any month in 1947 in an approved warehouse *in Chicago* and continuously maintained in such storage thereafter (R. 42, 1107).

Under the pertinent Exchange rule (R. 45), trading in December egg futures terminated on December 23, 1947. Refrigerator eggs *in Chicago* were deliverable, however, in satisfaction of contractual obligations, until the last business day of the month, *i.e.,* December 31, 1947 (R. 42-45, 1123).

The Exchange rules precluded physical delivery in Chicago of refrigerator eggs originally stored in warehouses outside of that city, since they provided that refrigerator eggs, to be "deliverable", must

be continuously stored in the warehouse where originally stored (R. 40-45, 443, 1107). A party who had contracted to deliver under a December 1947 egg futures contract could satisfy his obligation by tendering a warehouse receipt for eggs physically located at an out-of-town warehouse. This, however, was subject to two important qualifications: (1) such delivery entailed a penalty of approximately $315 per contract; (2) the tender was required to be made prior to the last two days of trading on the Exchange, *i.e.*, before the opening of trading on December 22, 1947.[3] R. 40-45, 142, 771. Accordingly, on the last two days of trading (days when Great Western liquidated the bulk of its holdings, see *infra*, pp. 7-8), out-of-town refrigerator eggs were not available on any terms to shorts (R. 771).

The Exchange rules also permitted the substitution of fresh eggs,[4] located in Chicago, for refrigerator eggs in satisfaction of obligations incurred under refrigerator egg contracts. But, under the rules, the short would receive no premium for delivering fresh, in lieu of refrigerator, eggs (R. 43-44, 1107), although, in the month of December, fresh eggs normally sell at a very substantial premium over refrigerator eggs.[5]

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[3] The trading day was from 9:20 A.M. until 12:00 Noon (R. 1133-1136).

[4] Fresh eggs are defined in the Exchange rule as eggs which have not been in cold storage more than 29 days (R. 1105).

[5] In December 1946, fresh eggs in Chicago sold for an average of 12.8¢ per dozen more than refrigerator eggs in Chicago (Gov. Ex. 50, R. 1260, 1089), a difference of $2304 per carlot. On December 12, 1947, with 7 trading days remaining in December egg futures, fresh eggs in Chicago were selling at 7.25¢

On December 1, 1947, Great Western held 272 long December refrigerator egg futures contracts, or 33.3% of the total number of such contracts open on the Chicago Mercantile Exchange. At the close of trading on December 18, with 3 trading days remaining, Great Western held 221 of the 336 long contracts (65.8%). The following day, the figure had advanced to 179 out of 235 long contracts (76.2%). At the close of trading on December 22, with one trading day remaining, the figure stood at 113 out of 153 long contracts (73.9%) (Gov. Ex. 4, R. 1117, 98). The principal witness for petitioners conceded that Great Western's position in the futures market was a "large" one (R. 660, 714). During the last two days of trading, Great Western substantially liquidated its December futures position, reducing its long holdings by 154 contracts (Gov. Ex. 4, R. 1117, 98).

Great Western's position in actual or cash eggs (as distinct from futures) also increased steadily during the month of December 1947. On December 1, Great Western owned 5.7% of the total stock of refrigerator eggs in Chicago. On December 3, the figure was 29.3%; on December 18, 43.9%; on December 22, 51%; on December 23, 56.7% (Gov. Ex. 9, R. 1125, 108).[6] Moreover, not all eggs in

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per dozen more than refrigerator eggs in Chicago (Gov. Ex. 43, R. 1252, 1014), a difference which would amount to $1305 per egg futures contract.

During the 10-year period 1937-1946, only one carlot of fresh eggs was delivered out of a total of 1224 December contracts settled by delivery (Gov. Ex. 17, R. 1139, 166).

[6] On December 31, Great Western held at least 97.5% of the "deliverable" eggs remaining on hand (Gov. Ex. 10, R. 1126, 110). This, of course, is the typical aftermath of a corner.

Chicago storage were "deliverable" under the Exchange rules,[7] so that actually Great Western's cash eggs position was substantially larger than the above percentages would indicate.

It also appears that, out of a total of 55 carlots of eggs which were delivered in December 1947 (19 of which were redelivered), Great Western was the "ultimate stopper" of 53 carlots, that is to say, Great Western received and removed from circulation 53 of the 55 carlots which were delivered in satisfaction of December egg futures (Gov. Ex. 16, R. 1137, 1138, 161). Despite the steady increase in Great Western's cash eggs position during the month of December, the company sold only 7 carlots of cash eggs to Chicago buyers during the period December 10-December 23. None were sold to Chicago buyers during the crucial last days of December trading when Great Western liquidated its long futures contracts (Gov. Ex. 37, R. 1241-1245, 461). Dr. W. Edwards Beach, a qualified expert in the field of commodity trading, testified that, on the basis of the uncontroverted figures, Great Western had acquired and withheld from sale in Chicago a substantial part of the cash supply of refrigerator eggs available to shorts (R. 436, 358-359).

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[7] Some of the eggs were undeliverable because of their poor quality, and other eggs were stored in lots too small to qualify under the delivery rule (Gov. Ex. 11, R. 1127, 117, 1106-1107). The eggs stored in lots too small to qualify could not be combined with larger lots because of the rule that the lots "must be stored within a period of three business days and the entire unit must be delivered from the same warehouse" (R. 1107).

The record also shows that, from the close of trading on December 2, 1947, until the close of trading on December 22, 1947, Great Western's long December futures position was greater than the total stocks of refrigerator eggs in Chicago not owned by Great Western. During most of this period Great Western's long December futures position was 2 or 3 times larger than the total stocks of refrigerator eggs stored in Chicago. For example, at the close of trading on December 19, with only the last two trading days remaining, Great Western had long futures contracts calling for the delivery of 179 carlots of eggs, but there were in Chicago only 61 carlots of refrigerator eggs not owned by Great Western. From the close of trading on December 2 until the close of trading on December 22, the holders of a substantial number of short December contracts, ranging from at least 12 to 173 contracts, could not liquidate their contracts, save by adopting one of three courses: (1) Purchasing fresh eggs; (2) purchasing and delivering (prior to the last two days of trading) out-of-town refrigerator eggs and incurring the penalty incident thereto; (3) purchasing from Great Western (Gov. Ex. 8, R. 1124, 106). Dr. Beach concluded, on the basis of all of the statistical and economic data, that Great Western had cornered the December 1947 egg futures market (R. 325-335, 293-296).

During December 1947, Great Western was concededly engaged in a spread or straddle operation, *i.e.*, Great Western had a long December egg fu-

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tures position and a short January egg futures position, which depended for a profit upon a widening of the spread between the price of December 1947 and January 1948 egg futures contracts (R. 576-577, 560-561, 541-542, 48-50). In fact, the spread between the price of December 1947 and January 1948 egg futures contracts widened from 1.82¢ on December 1, 1947, to 8.12¢ on December 23, 1947, the last day of trading in December futures (Gov. Ex. 1, R. 1100, 96). Great Western realized a gross profit of $182,088 on the transactions involved in this case (Gov. Ex. 22, R. 1217, 272).

The synoptic table in Appendix B (*infra*, p. 22) shows various positions and transactions of Great Western, and the spread between the price of December 1947 egg futures contracts and January 1948 egg futures contracts on the Chicago Mercantile Exchange during the period from December 1, 1947, until December 23, 1947, the last day of trading in December futures. The graphic chart in Appendix C (*infra*, p. 23) illustrates the figures in columns 6 and 7 of the synoptic table, and shows the relationship between the percentage of the total long December contracts owned by Great Western and the spread between the price of December 1947 and January 1948 egg futures contracts.

The Court of Appeals found that the evidence sustained the findings that the prices of refrigerator eggs and December futures were abnormally high in December 1947 in relation to "(a) the price of January 1948 futures and (b) fresh eggs in

December 1947" (R. 1479). The normal price relationship between December and January futures is for December futures to be at a premium of less than 1½¢ over January futures during the final weeks of December trading (Gov. Exs. 27-30, R. 1231-1234, 456-458, 296-306). In 1947, December futures were at a premium of 5.94¢ over January futures at the close of trading in December futures (Gov. Ex. 28, R. 1232, 457). In addition, the change in the spread between the prices of December and January futures is normally not more than 1¢ during the last seven weeks of trading. In 1947 the change was 5.67¢ (Gov. Ex. 30, R. 1234, 458, 303-306).

Normally, the price of fresh eggs and the price of December refrigerator futures move in the same direction during the last week of trading in December futures, with the fresh egg price at a substantial premium over the refrigerator futures price (Gov. Exs. 31-32, R. 1235-1236, 458). However, in the last week of trading in December 1947, the price of fresh eggs was declining rapidly while the refrigerator futures price was increasing, so that on the last day of trading the refrigerator futures price was within ½¢ of the fresh egg price (Gov. Ex. 31, R. 1235, 458). Three days after the close of trading in December futures, the price of refrigerator eggs had declined from 53.50¢ per dozen (R. 1100) to below 46¢ per dozen (R. 1194), a drop of about 7½¢ per dozen.

ARGUMENT

The decision below, affirming the findings of fact by the Judicial Officer that petitioners had cornered the December 1947 egg market on the Chicago Mercantile Exchange, in violation of the Commodities Exchange Act, is clearly correct. The petition for a writ of certiorari, which, in effect, merely reargues the evidence, presents no question warranting review by this Court.

1. The undisputed facts establish that Great Western acquired and maintained, until the close of trading in December 1947 egg futures contracts, a large and controlling long position in December egg futures contracts on the Chicago Mercantile Exchange (see *supra,* pp. 6-10). This was fortified by substantial control of the available cash egg supply, *supra,* pp. 7-10. As a result of Great Western's market control, the shorts were unable to cover their contracts without settling at an artificially high price dictated by Great Western, *supra,* pp. 9-11. As the Court of Appeals stated (R. 1480), "a review of the entire record is convincing that the greater weight of the evidence sustained the Referee and Judicial Officer in their conclusion that petitioner Great Western had cornered the egg market on the Chicago Mercantile Exchange in December 1947." Accordingly, there is no basis for petitioners' contention (Pet. 20-21) that the court below did not properly consider the evidence,[8]

[8] There is, of course, no inconsistency between the opinion below and the Seventh Circuit's prior decision in *General Foods Corporation* v. *Brannan,* 170 F. 2d 220, 224, concerning the scope of judicial review.

nor for their contention that the evidence did not support the ultimate findings.

Certainly there is no merit in petitioners' suggestion (Pet. 21) that the court erred when it declared that in determining credibility of witnesses the hearing examiner had an advantage over a reviewing court. "Face to face with living witnesses the original trier of the facts holds a position of advantage from which appellate judges are excluded." *United States* v. *Oregon Med. Soc.*, 343 U. S. 326, 339; *Universal Camera Corp.* v. *Labor Board*, 340 U. S. 474, 495-496. *Accord: National Labor Relations Board* v. *Universal Camera Corp.*, 190 F. 2d 429, 430 (C. A. 2); *Ohio Associated Tel. Co.* v. *National Labor Relations Bd.*, 192 F. 2d 664, 668 (C. A. 6); *Jennings* v. *Murphy*, 194 F. 2d 35, 36 (C. A. 7); *National Labor Relations Board* v. *Dinion Coil Co.*, 201 F. 2d 484, 490 (C. A. 2).

2. Petitioners particularly challenge (Pet. 10-12) the character of proof adduced by the Government to show that price manipulation actually occurred. The Court of Appeals concluded that the Government had proved the economic effects of petitioners' transactions by showing that the prices of refrigerator eggs and December futures were abnormally high, in December 1947, in relation to "(a) the price of January 1948 futures and (b) fresh eggs in December 1947" (R. 1479).

It is, of course, familiar doctrine that "the effect of the squeeze or corner upon prices" is to be found "in spreads between current-delivery and later-maturing options", and that the existence of an

abnormal price spread "affords a test of the existence of a corner." *Report of the Federal Trade Commission on the Grain Trade* (1926), Vol. VII, pp. 77, 245, 248.[9] The evidence showed clearly that petitioners, by their activities, succeeded in substantially widening the spread between December 1947 and January 1948 futures, *supra,* pp. 9-11. Further confirmation is found in the fact that, three days after the close of trading in December refrigerator egg futures, the price of refrigerator eggs tumbled 7½¢ per dozen. "The statistical evidence of a corner—and also the evidence that it serves no good economic purpose—is the prevalence at the close of the delivery month of markedly higher prices than in the days following * * *" *Report of the Federal Trade Commission on the Grain Trade* (1920), Vol. V, p. 323.

Equally significant was the proof that the price of December 1947 refrigerator eggs was abnormally high in relation to fresh eggs. As already noted (*supra,* p. 11), on the last day of December trading, refrigerator eggs were selling at a price only ½¢ per dozen less than fresh eggs. It requires little argument that the sudden and highly abnormal narrowing of a price gap between an allegedly cornered product and a more expensive substitute product is probative of the existence of a corner.

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[9] See, also, Working, "Price Relations Between July and September Wheat Futures at Chicago Since 1885" (in *Wheat Studies of the Food Research Institute,* Stanford University, Vol. IX, No. 6, March 1933, p. 211); Working, "Price Relations Between May and New-Crop Wheat Futures in Chicago Since 1885" (in *Wheat Studies of the Food Research Institute,* Stanford University, Vol. X, No. 5, February 1934, p. 184).

3. Petitioners have attempted to cloak their remaining factual arguments in the garb of questions of law, but analysis of these questions demonstrates clearly that they are either based on erroneous factual premises or are restatements of evidentiary arguments.

Thus, petitioners' question 1(b) (Pet. 2-3) omits the controlling facts that, under the Exchange delivery rule, out-of-town refrigerator eggs could not be delivered on or after the crucial last two days of trading during which Great Western liquidated the bulk of its large and controlling long position, and that if such eggs were delivered prior to the last two days of trading, the short was required to pay a penalty of about $315 per contract, *supra,* p. 6. Petitioners' question 1(c) (Pet. 3), relates to whether a corner exists if 52% of the shorts are not cornered. But in this case a majority of the shorts were cornered,[10] and petitioners' asserted question is not presented. Petitioners' question 1(d) (Pet. 3) relates to whether a corner exists "in the absence of withholding of the commodity by the alleged cornerer from the market, the *court* having made no finding of any withholding?" (Emphasis supplied.) But the Judicial Officer found, upon the basis of convincing

[10] The petitioners' reference to 52% of the shorts not cornered is based on the data for December 19 in Government Ex. 35 (R. 1239, 460), but those figures are based on the assumption that all refrigerator eggs in Chicago were deliverable under the Exchange rule (R. 330). Actually, about 20 carlots of refrigerator eggs in Chicago were not deliverable (Gov. Exs. 9 and 10, R. 1125-1126, 106-117), and therefore about 67% of the shorts were cornered at the close of trading on December 19, with only the last two days of trading remaining.

proof (see *supra*, pp. 6-10), that Great Western "withheld December futures *and* cash storage eggs from the market" (R. 1422; emphasis supplied). And the Court of Appeals held that the undisputed statistical proof "amply justified the conclusion that, subsequent to December 15, Great Western held a controlling position in the available cash supply of eggs deliverable on December futures contracts" (R. 1476), and that the evidence supported "findings that Great Western had (1) acquired and maintained a dominant 'long' position in December 1947 egg futures which it combined with (2) the purchase of a controlling interest in a substantial part of the available cash supply of December 1947 eggs * * *" (R. 1479).[11] Petitioners' argument (Pet. 9, 13-14, 17) as to whether a corner can exist without controlling the cash commodity, is obviously not presented on this record.[12]

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[11] The Court of Appeals held that the evidence sustained the finding that refrigerator eggs in Chicago were the only supply of eggs "available to the shorts for performance of their December 1947 obligations" (R. 1474-1475). This holding is consistent with the Court's prior holding in *General Foods Corporation* v. *Brannan*, 170 F. 2d 220, 228-229 (C.A. 7), where it was held that out-of-town rye must be considered in determining the *motive* of one of the petitioners involved in that case when he attempted to keep Winnipeg rye from the Chicago market. Also, in the case of May rye futures involved in the *General Foods* case, the shorts had at least a week after the close of trading within which to bring rye into Chicago for delivery (3 F. R. 418). In the case of refrigerator egg contracts involved in the case at bar, out-of-town refrigerator eggs could never be brought into Chicago for delivery, and they could not be delivered on the crucial last two days of trading or thereafter, *supra*, pp. 5-6.

[12] In *United States* v. *Patten*, 226 U. S. 525, 539-540, the Court stated that "counsel for the Government expressly conceded, that 'running a corner' consists, broadly speaking, in acquiring control of all or the dominant portion of a commodity

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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JUNE, 1953.

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with the purpose of artificially enhancing the price, 'one of the important features of which,' to use the language of the Government's brief, 'is the purchase for future delivery, coupled with a withholding from sale for a limited time;' and as this definition is in substantial accord with that given by lexicographers and juridical writers, *we accept it for present purposes, although observing that not improbably in actual usage the expression includes modified modes of obtaining substantially the same end*" (emphasis supplied). It is not clear whether the Court was referring to a withholding of the cash commodity, as distinguished from a withholding of futures contracts, but in any event, the Court made it clear that the result achieved is the test of a corner, and not the method used to obtain a corner. The issue is manifestly not involved in the case at bar, but it is clear that a corner could occur without controlling any of the cash commodity. For example, if there were 1,000 egg futures contracts open on the Exchange, and only 100 carlots of eggs available for delivery, a corner could be effectuated by obtaining a controlling long position on the Exchange without controlling any of the cash eggs.

APPENDIX A

Statutory Provisions

The following sections of the Commodity Exchange Act are pertinent to this case:

Section 2 (a)

For the purposes of this Act * * * [t]he act, omission, or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person. * * * [42 Stat. 998; 7 U.S.C. § 4.]

Section 3

Transactions in commodities involving the sale thereof for future delivery as commonly conducted on boards of trade and known as "futures" are affected with a national public interest; that such transactions are carried on in large volume by the public generally and by persons engaged in the business of buying and selling commodities and the products and by-products thereof in interstate commerce; that the prices involved in such transactions are generally quoted and disseminated throughout the United States and in foreign countries as a basis for determining the prices to the producer and the consumer of commodities and the products and by-products thereof and to facilitate the movements thereof in interstate commerce; that such transactions are utilized by shippers, dealers, millers, and others engaged in handling commodi-

ties and the products and by-products thereof in interstate commerce as a means of hedging themselves against possible loss through fluctuations in price; that the transactions and prices of commodities on such boards of trade are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control, which are detrimental to the producer or the consumer and the persons handling commodities and products and by-products thereof in interstate commerce, and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in commodities and the products and by-products thereof and render regulation imperative for the protection of such commerce and the national public interest therein. [42 Stat. 999; 49 Stat. 1491; 7 U.S.C. § 5.]

Section 6 (b)

If the Secretary of Agriculture has reason to believe that any person (other than a contract market) is violating or has violated any of the provisions of this Act, or any of the rules and regulations made pursuant to its requirements, or has manipulated or is attempting to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any board of trade, he may serve upon such person a complaint stating his charges in that respect, to which complaint shall be attached or contained therein a notice of hearing, specifying a day and place not less than three days after the service thereof, requiring such person to show cause why an order should not be made directing that all con-

tract markets until further notice of the Secretary of Agriculture refuse all trading privileges to such person, and to show cause why the registration of such person, if registered as futures commission merchant or as floor broker hereunder, should not be suspended or revoked. Said hearing may be held in Washington, District of Columbia, or elsewhere, before the Secretary of Agriculture, or before a referee designated by the Secretary of Agriculture, which referee shall cause all evidence to be reduced to writing and forthwith transmit the same to the Secretary of Agriculture. * * * Upon evidence received, the Secretary of Agriculture may require all contract markets to refuse such person all trading privileges thereon for such period as may be specified in the order, and, if such person is registered as futures commission merchant or as floor broker hereunder, may suspend, for a period not to exceed six months, or revoke, the registration of such person. Notice of such order shall be sent fortwith by registered mail or delivered to the offending person and to the governing boards of said contract markets. After the issuance of the order by the Secretary of Agriculture, as aforesaid, the person against whom it is issued may obtain a review of such order or such other equitable relief as to the court may seem just by filing in the United States court of appeals of the circuit in which the petitioner is doing business a written petition praying that the order of the Secretary of Agriculture be set aside. A copy of such petition shall be forthwith served upon the Secretary of Agriculture by delivering such copy to him, and thereupon the Secretary of Agriculture shall forthwith certify and file in the court a transcript of the record

theretofore made, including evidence received. Upon the filing of the transcript the court shall have jurisdiction to affirm, to set aside, or modify the order of the Secretary of Agriculture, and the findings of the Secretary of Agriculture as to the facts, if supported by the weight of evidence, shall in like manner be conclusive. [42 Stat. 1002; 49 Stat. 1498-1499; 62 Stat. 991; 63 Stat. 107; 7 U.S.C. § 9.]

Section 9

Any person who shall * * * manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any board of trade, or who shall corner or attempt to corner any such commodity * * * shall be deemed guilty of a misdemeanor, and, upon conviction thereof, be fined not more than $10,000 or imprisoned for not more than one year, or both, together with the costs of prosecution. [42 Stat. 1003; 49 Stat. 1491, 1501; 7 U.S.C. § 13.]

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APPENDIX B

Date 1947	Great Western's Long December Position at Close of Trading on Dates Indicated 1/	Great Western's Short January Position at Close of Trading on Dates Indicated 1/	Great Western's Purchases of December Futures on the Dates Indicated 2/	Great Western's Sales of December Futures on the Dates Indicated 2/	Total Open Contracts in December Futures at Close of Trading on Dates Indicated 1/	Great Western's Percentage of Total Long December Futures at Close of Trading on Dates Indicated 1/	Price Spread Between Dec. 47-Jan. 48 Futures at Close of Trading on Dates Indicated 3/	Number of Short Contracts, at Close of Trading on Dates Indicated, which Could Not Be Liquidated without Resort to Great Western, Fresh Eggs, or Out of Town Refrigerator Eggs 4/
	(carlots) (Col. 1)	(carlots) (Col. 2)	(carlots) (Col. 3)	(carlots) (Col. 4)	(carlots) (Col. 5)	(percent) (Col. 6)	(cents) (Col. 7)	(contracts) (Col. 8)
Dec. 1	272	277	20	5	818	55.5	1.82	-
Dec. 2	292	295	28	8	740	59.5	3.22	12
Dec. 3	291	316	15	35	717	47.6	3.77	70
Dec. 4	287	297	0	30	641	42.7	3.77	64
Dec. 5	282	324	34	15	588	48.6	4.22	93
Dec. 6	282	298	1	37	554	50.9	4.12	98
Dec. 9	282	295	20	6	517	54.5	4.05	98
Dec. 10	291	315	16	17	509	55.2	4.20	110
Dec. 11	274	308	9	5	495	55.4	4.47	131
Dec. 12	272	308	1	2	470	57.9	4.50	140
Dec. 15	256	298	10	16	451	56.8	4.72	140
Dec. 16	256	257	1	21	405	63.5	5.40	126
Dec. 17	256	264	10	—	365	54.4	4.50	147
Dec. 18	221	189	—	6	356	65.0	5.00	142
Dec. 19	170	187	2	56	235	76.2	6.20	115 5/
Dec. 22	113	187	—	57	155	75.9	6.87	50 5/
Dec. 23	25	187	5	84	28	96.2	8.12	-

1/ From Government Exhibit No. 4 (R. 1117).

2/ From Government Exhibit No. 7 (R. 1125).

3/ From Government Exhibit No. 1 (R. 1100).

4/ From Column No. 6 of Government Exhibit No. 55 (R. 1259). These figures are based on the assumption that all refrigerator eggs in Chicago were deliverable under the Exchange rule, and the figures would be increased by the number of refrigerator eggs in Chicago which did not qualify under the Exchange delivery rule.

5/ Refrigerator eggs stored in warehouses outside of Chicago could not be delivered on the last two trading days, i.e., after 9:00 a.m. on December 22, 1947.

APPENDIX C

SPREAD BETWEEN CLOSING PRICES OF DECEMBER AND JANUARY EGG FUTURES, CHICAGO MERCANTILE EXCHANGE, AND PERCENTAGE OF TOTAL OPEN LONG CONTRACTS HELD BY GREAT WESTERN FOOD DISTRIBUTORS, INC., NOVEMBER 3 - DECEMBER 23, 1947